

In the Matter of Merchant Mariner's Document No. Z-628429 and all other Seaman Documents
Issued to: SAMUEL E. BARNETT, JR.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1162

SAMUEL E. BARNETT, JR.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 24 November 1959, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a lounge steward on board the United States SS LURLINE under authority of the document above described, on or about 14 June 1959, Appellant wrongfully addressed improper and suggestive language to a minor female passenger, Miss Geraldine Ann Hendrick, age 13.

The hearing commenced and ended at San Francisco. Appellant was represented by counsel of his own choice throughout the hearing. Appellant entered a plea of guilty to the charge and specification. Evidence was introduced by both parties. The testimony of Miss Hendrick and her father was taken at Long Beach, California. Appellant denied having seen Miss Hendrick at any time before she identified him as the person guilty of the alleged offense. Appellant claimed that, at the time of the alleged incident, other children were helping him collect the books after the church services in the lounge.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of two months outright plus six months' suspension on eighteen months' probation.

FINDINGS OF FACT

On 14 June 1959, Appellant was serving as a lounge steward on board the United States SS LURLINE and acting under authority of his Merchant Mariner's Document No. Z-628429 while the ship was at sea.

Miss Hendrick was among those leaving the main lounge after church services on this date when Appellant asked her to help collect the books. Miss Hendrick agreed and there was a brief

exchange of polite conversation during which she informed Appellant of her name and age. (Although only thirteen year of age, Miss Hendrick appeared to be several years older.) Then, after requesting her not to tell anyone if Appellant asked a personal question, he said to Miss Hendricks, "Are you a virgin?" She was frightened and walked away. Miss Hendrick reported the incident to her mother and father.

Later in the day after her father had contacted the ship's officers, Miss Hendrick was on deck with the Staff Captain looking for the seaman involved when she saw and identified Appellant as the guilty party. Shortly thereafter, she verified this identification when Appellant was brought before her in the presence of the Staff Captain and others.

Appellant was logged and demoted as a result of this. He consistently proclaimed his complete innocence and denied having seen Miss Hendrick prior to the identification.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is insufficient evidence to support the allegations; the conduct alleged does not constitute misconduct within the meaning of 46 U.S. Code 239 and the regulations promulgated thereunder.

It is incredible that the alleged offense took place in the presence of many other people in the lounge and that Miss Hendrick could not find anyone to corroborate her testimony that she was talking with Appellant. Her testimony was taken at Long Beach and Appellant was unable to be present. Appellant did not have any opportunity to obtain evidence to corroborate his denial of even talking with Miss Hendrick. If the incident occurred, there is still a question of possible mistaken identity.

The alleged language could have been no more than an indiscreet remark. This is not an offense within the definition of moral turpitude as an act of baseness or depravity. There is no basis for the finding of the Examiner that Miss Hendrick was "placed in fear." In any event, a minor departure by a seaman from a strict moral standard is not an offense within the disciplinary jurisdiction of the Coast Guard, the primary function of this being limited to the protection of life and property at sea.

It is respectfully submitted that the present proceeding should never have been instituted and should now be dismissed.

APPEARANCE: Roos, Jennings and Haid of San Francisco, California, by John Paul
 Jennings, Esquire, of Counsel

OPINION

The above findings of fact are based on the testimony of Miss Hendrick which was accepted by the Examiner. Although recognizing that she was only thirteen years old, the Examiner was influenced by Miss Hendrick's generally mature demeanor and her straightforward manner of answering questions. Her testimony was consistent with the first report of the incident to her parents; she testified with certainty as to what was said and Appellant's identification as the seaman involved (the manner of identification on deck was satisfactory); there was no apparent motive for fabrication - - they had never previously seen each other according to their testimony. Appellant was represented by competent counsel who had full opportunity to cross-examine Miss Hendrick when she testified at Long Beach. In view of these factors, I do not think that the unlikelihood of such an incident occurring in the presence of other people and the inability to locate one of them who saw Miss Hendrick and Appellant conversing are sufficient reasons for rejecting the Examiner's findings as to the credibility of witnesses who appeared before him.

Appellant should have been given an opportunity on the ship to find the children he claims were helping him at the time in question. Such evidence would have supported his denial to some extent but not conclusively since all the people were in the same vicinity. Hence, it is my opinion that Appellant's cause was not materially prejudiced in this respect.

The Examiner properly found that Miss Hendrick was "placed in fear" based on her testimony that she was scared and upset. This emphasized the fact that, under the prevailing circumstances, the question asked by Appellant was an act involving moral turpitude within the definition that the latter is conduct which offends the moral senses, independent of any law against it. Commandant's Appeal Decision No. 1013. This question was far from conforming with the generally accepted moral standards of this country. Hence, I do not agree with Appellant's analysis that this was a minor departure from a strict moral standard. Appellant recognized this when he requested secrecy. If the standards for seamen and passengers are different, the seamen must conform with the moral standards of the passengers when talking with them.

It has been recognized by the courts for many years that there is a strong obligation to respect the feelings of passengers on ships. See Commandant's Appeal Decision No. 905 citing Federal courts' decisions. The Coast Guard's duty to protect lives and property at sea extends to the protection against immorality. Commandant's Appeal Decision No. 1042. This certainly includes the disciplining of crew members for offenses, against passengers, involving moral turpitude.

ORDER

The order of the Examiner dated at San Francisco, California, on 24 November 1959, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 27th day of April, 1960.